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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHEILA ANN DELMONTE-WRIGHT,
Plaintiff(s),

Case No.: 2:19-cv-00921-APG-NJK

v.

Order

[Docket No. 26]

GEICO CASUALTY COMPANY,
Defendant(s).

Pending before the Court is Defendant's motion for reconsideration of the order denying the motion for relief with respect to the noticed deposition of Justine Rutter. Docket No. 26. The motion for reconsideration was filed on an emergency basis and any response was due by noon today, November 7, 2019. Docket No. 29. No response has been filed. The motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion is **GRANTED** in part and **DENIED** in part.

I. BACKGROUND

On September 19, 2019, Plaintiff noticed the deposition of Defendant's employee Justine Rutter to take place in Las Vegas on November 13, 2019. Docket No. 20-1. Hence, 55-days' notice was provided for that deposition. On September 30, 2019, Defendant objected to this notice by asserting that (1) Ms. Rutter cannot be compelled to testify in Nevada because she is not a resident here, (2) the deposition was unilaterally noticed without consulting with defense counsel, and (3) the deposition testimony should have been subpoenaed because Ms. Rutter is a non-party.

1 Docket No. 20-3 at 4. The meet-and-confer was not conducted for another 32 days, until
2 November 1, 2019. Docket No. 20 at 2. On November 5, 2019, Defendant moved for relief from
3 the deposition that was then scheduled to take place just four business days later. *See* Docket No.
4 20 (notice of electronic filing). Given the failure to promptly move for relief, the Court summarily
5 denied Defendant’s motion as untimely. Docket No. 22 (citing, *inter alia*, *Cardoza v. Bloomin’*
6 *Brands, Inc.*, 141 F. Supp. 3d 1137, 1143 (D. Nev. 2015) and *Allstate Ins. Co. v. Nassiri*, 2011 WL
7 4905639, *1 (D. Nev. Oct. 14, 2011)).¹

8 Defendant and Ms. Rutter are now before the Court seeking reconsideration of that order.
9 Docket No. 26.² The primary basis for that request is to alert the Court to the fact that counsel’s
10 “initial overture” to initiate the meet-and-confer was on October 28, 2019, which counsel
11 characterizes as “much earlier” than the actual meet-and-confer date of November 1, 2019. *Id.* at
12 2, 3. The motion for reconsideration also makes clear that, due to poor advice from counsel, Ms.
13 Rutter is currently overseas for a pre-planned wedding and is unavailable for deposition on the
14 scheduled date. *See id.* at 5.

15 **III. STANDARDS**

16 “Reconsideration is an extraordinary remedy, to be used sparingly.” *Koninklijke Philips*
17 *Elecs. N.V. v. KXD Tech., Inc.*, 245 F.R.D. 470, 472 (D. Nev. 2007) (citation and internal
18 quotations omitted). Motions for reconsideration are disfavored. Local Rule 59-1(b).
19 Reconsideration of an interlocutory order may be appropriate if (1) there is newly discovered
20 evidence that was not available when the original motion or response was filed, (2) the Court
21 committed clear error or the initial decision was manifestly unjust, or (3) there is an intervening
22 change in controlling law. Local Rule 59-1(a). It is well-settled that a motion for reconsideration
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24 ¹ Given this untimeliness, the Court did not reach the substantive arguments presented,
25 including that the location of the deposition was improper. *Cf.* Fed. R. Civ. P. 45(d)(3) (a nonparty
26 seeking to quash a subpoena based on improper location must file a “*timely* motion” (emphasis
added)).

27 ² The previous motion was filed only on behalf of Defendant. As the Court noted
28 previously, it was not entirely clear that Defendant has standing to seek relief given its assertions
that Ms. Rutter must be treated as a non-party for discovery purposes. *See* Docket No. 22 at 3 n.3
(citing *Paws Up Ranch, LLC v. Green*, 2013 WL 6184940, at *2 (D. Nev. Nov. 22, 2013)).

1 “may *not* be used to raise arguments or present evidence for the first time when they could
2 reasonably have been raised earlier in the litigation.” *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615,
3 670 (D. Nev. 2013) (emphasis in original, citation and internal quotations omitted). On the other
4 hand, “[a] movant must not repeat arguments already presented unless (and only to the extent)
5 necessary to explain controlling, intervening law or to argue new facts.” Local Rule 59-1(b).

6 **IV. ANALYSIS**

7 In applying these standards, the Court first rejects Defendant’s argument that
8 reconsideration is proper based on the newly-raised—but previously existing—fact that counsel
9 first reached out to schedule a meet-and-confer on October 28, 2019. That fact does not in any
10 way change the conclusion that counsel unduly delayed in bringing a motion for relief from the
11 deposition. Again, counsel was provided 55-days’ notice of the deposition, but did not file a
12 motion for relief until four business days before the deposition was scheduled to take place. That
13 fatal circumstance is left unchanged regardless of the fact being newly raised, and the
14 circumstances as currently presented in the motion for reconsideration continue to show that
15 Defendant’s motion was properly denied as untimely. *See, e.g., Allstate Ins. Co. v. Nassiri*, 2011
16 WL 4905639, *1 (D. Nev. Oct. 14, 2011) (overruling objections to magistrate judge order finding
17 an emergency motion to quash subpoena was untimely when three-weeks’ notice was provided for
18 a deposition but the motion to quash was filed only three business days before the deposition).

19 The motion for reconsideration gains more traction in the also-newly-raised fact that, on
20 the advice of counsel, Ms. Rutter left the country for a pre-planned wedding and is unavailable to
21 be deposed as currently scheduled. To be clear, this fact should have been raised in the motion
22 itself. Moreover, and more importantly, the advice of counsel evidences a fundamental
23 misunderstanding of the judicial process: a litigant cannot grant himself the relief he seeks by
24 filing a motion. *See, e.g., Nationstar Mtg., LLC v. Flamingo Trails No. 7 Landscape Maintenance*
25 *Assoc.*, 316 F.R.D. 327, 336 (D. Nev. 2016) (discussing, *inter alia*, *Pioche Mines Consol., Inc. v.*
26 *Dolman*, 333 F.2d 257, 269 (9th Cir. 1964)). Only an order from the Court actually relieves a
27 witness from appearing at a deposition. *See id.* An attorney is living dangerously in advising a
28 client that she may leave the country notwithstanding a scheduled deposition when there has been

1 no stipulation with opposing counsel to move the deposition date and no order from the Court
2 vacating it. The Court would be well within its discretion to deny reconsideration given these
3 circumstances, but as a one-time courtesy to Ms. Rutter herself, the Court will reconsider its prior
4 order only in that the current deposition date is vacated. The ship has sailed on the other arguments
5 presented, however, including those regarding the method of service and the location of the
6 deposition; those arguments were waived by failing to file a timely motion. *See, e.g.*, Fed. R. Civ.
7 P. 45(d)(3). Accordingly, Ms. Rutter must appear for deposition in Las Vegas at a mutually
8 agreeable date no later than seven days after her return from her overseas trip.

9 **V. CONCLUSION**

10 For the reasons discussed above, the motion for reconsideration is **GRANTED** in part and
11 **DENIED** in part.

12 IT IS SO ORDERED.

13 Dated: November 7, 2019

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17 Nancy J. Koppe
18 United States Magistrate Judge
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